

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Determination of Threatened Species Status for the Blackside Dace

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines the blackside dace (*Phoxinus cumberlandensis*) to be a threatened species under the Endangered Species Act of 1973 (Act), as amended. Historically, this fish likely inhabited many small cool-water streams in the upper Cumberland River System in southeastern Kentucky and northeastern Tennessee. However, primarily due to the impacts of siltation from coal mining prior to adoption of current regulations, silviculture, agriculture, and road construction, and the impacts of unregulated acid mine drainage and impoundments, the species is now restricted to short stream reaches (an estimated total of 14 stream miles) in 30 streams. Most of these streams are now threatened by many of the same factors that caused the species' original decline. Determination of threatened status implements the protection provided by the Act for the blackside dace.

**DATE:** The effective date of this rule is July 13, 1987.

**ADDRESS:** A complete file for this rule is available for public inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

**FOR FURTHER INFORMATION CONTACT:** Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

**SUPPLEMENTARY INFORMATION:****Background**

The blackside dace (*Phoxinus cumberlandensis*) was discovered in 1975 (a few misidentified specimens from old collections have now been found) and described by Starnes and Starnes (1978). This fish occupies streams on both public and private property in the upper Cumberland River drainage (primarily above Cumberland Falls) in Pulaski, Laurel, McCreary, Whitley, Knox, Bell, Harlan, and Letcher Counties, Kentucky; and Scott, Campbell, and Claiborne Counties, Tennessee; where it inhabits small (7 to 15 feet wide) upland streams with

moderate flows. The extent of the blackside dace's historic distribution is unknown, but available records show that it has been extirpated from at least 10 streams (O'Bara 1985). Starnes (1981) reported that, based on his physical habitat evaluation, it may have existed in at least 52 other streams, but was eliminated before it was discovered in these waters. Presently, it is known from a total of only about 14 stream miles in 30 separate streams (O'Bara 1985).

The areas of Kentucky and Tennessee inhabited by the fish are rich in coal reserves and forest resources. It is believed that impacts associated with the development of these resources in the past has caused the loss of many blackside dace populations. Harker *et al.* (1980b) stated that many streams in the upper Cumberland River basin have been affected by acid mine drainage. This report further stated that the major source of pollution in the area is the excessive siltation associated with strip mining, highway construction, and poor land use. Future mining of the area's coal reserves (if not conducted in accordance with all existing regulations), increased silvicultural and agricultural activities, road and bridge construction, and other activities that are not conducted with the welfare of the species in mind are expected to further threaten the species.

The blackside dace is listed by the Kentucky Nature Preserves Commission (Harker *et al.* 1980a) as a "threatened (endemic)" species and by the Tennessee Heritage Program of the Tennessee Department of Conservation as "endangered." This small fish (less than 3 inches long) has a single black lateral stripe, a green/gold back with black specks, and a pale or sometimes brilliant scarlet belly (Starnes and Etnier 1980). The fish's fins are often bright yellow with metallic silver surrounding the base of the pelvic and pectoral fins. The species is generally associated with undercut banks and large rocks, and the better populations are found within relatively stable, well-vegetated watersheds with good riparian vegetation (Starnes 1981). Stable watersheds help maintain cool water temperatures and minimize silt to the benefit of the species. O'Bara (1985) also found that the fish's presence was apparently closely correlated with healthy riparian vegetation where canopy cover exceeded 70 percent and where stream flows were of sufficient velocity to remove silt from areas just downstream of the riffles. The fish was not found in low gradient silty streams nor in high gradient mountain tributaries. The blackside dace spawns in May and June and is thought to feed

on algae, detritus, and sometimes insects (Starnes 1981).

On December 30, 1982, the Service announced in the *Federal Register* (47 FR 58454) that the blackside dace, along with 146 other fish species, was being considered for addition to the List of Endangered and Threatened Wildlife. On May 1, 1984 (received by the Service May 16, 1984), Mr. George Burgess, Secretary-Treasurer of the Southeastern Fishes Council, submitted a petition to list the species as threatened. The Service reviewed the petition and in the *Federal Register* of September 4, 1984 (49 FR 34878), announced its finding that the information submitted was substantial in indicating the petitioned action may be warranted. On January 4, 1985, the Service notified Federal, State, and local governmental agencies and interested parties of its review of the species' status. That notification requested information on the species' status and threats to its continued existence. Nine responses to the January 4, 1985, notification were received. Support for some measure of protection for the fish was contained in four letters, four letters outlined potential impacts on agency programs, and five letters commented on specific threats. On July 18, 1985, the Service published a notice in the *Federal Register* (50 FR 29238) concluding that the petition to list the species received from Mr. George Burgess on behalf of the Southeastern Fishes Council was warranted but was precluded from immediate proposal because of other pending actions to list, delist, or reclassify species. The blackside dace was proposed for listing as a threatened species on May 21, 1986 (51 FR 18624).

**Summary of Comments and Recommendations**

In the May 21, 1986, proposed rule (51 FR 18624) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted and requested to comment. At the request of Congressman Harold Rogers' office, an informal meeting was held by the Service with the Congressman's staff and individuals representing the U.S. Forest Service, Kentucky Department of Fish and Wildlife Resources, Kentucky Department of Surface Mining Reclamation and Enforcement, coal mining and logging interests, and private landowners. A newspaper notice was published in the *McCreary County*

Record on June 10, 1986, the *Independent Herald* and the *Whitley Republican* on June 12, 1986, and the *Middlesborough News* on June 14, 1986. A news release summarizing the proposed rule and requesting comments was also provided to newspapers in Kentucky and Tennessee. Fifteen written comments were received and are discussed below.

Senator Wendell Ford asked a series of questions regarding the potential effect of listing on the Commonwealth of Kentucky. His questions and the Service's response follow: *Question 1:* If habitat for blackside dace cannot be maintained under present mining regulations, could all mining be eliminated? *Response:* The Service has had numerous discussions with personnel from the Kentucky Department of Fish and Wildlife Resources, Kentucky Nature Preserves Commission, Kentucky Department of Surface Mining, plus other individuals with knowledge of the relationship between coal mining and the survival of the blackside dace. The consensus among these agencies is that the blackside dace is presently able to coexist with current coal mining regulations. Therefore, the Service believes that the species will continue to survive in watersheds where coal mining will occur as long as existing regulations which protect water quality are adhered to. If in the unlikely event the species cannot coexist with coal mining, even after all measures have been taken to reduce mining's impacts, coal mining still would not be stopped in the entire upper Cumberland River basin. At most, further restrictive measures might be necessary in those watersheds that presently contain the best populations. This would represent only a small number of watersheds. If these restrictions significantly impacted particular coal mine operators, these operators, the Governor of Kentucky, or the Office of Surface Mining could request an Endangered Species Act exemption for coal mining impacts to the blackside dace through a formal process set up by section 7(g) of the Act.

*Question 2:* Although agriculture, human development, and logging do not fall under the type of permitting and strict regulation that mining does, is there potential under the Act to extend regulation into these areas? *Response:* Section 7 of the Act, under which surface mining permits are reviewed for potential impacts to threatened and endangered species, addresses only Federal actions. Agriculture, human development, and logging on private lands where there are no Federal funds

or permits do not come under section 7 jurisdiction. There is no authority in the Act to regulate such private activities.

*Question 3:* What is the affected area and what would be protected if the species is listed? *Response:* The affected area would include only those particular streams in the Cumberland River watershed where the species is known to exist. As noted above, the protection required for these habitats would be adherence to existing laws and regulations. Human activities in these streams could continue under these regulations.

*Question 4:* At the present time, Knox County streams are not protected; but if a stream is later found to contain the fish, does its status automatically change? *Response:* If a population is found in a new stream, that population would receive protection under the Act, and section 7 would apply to any Federal activities in the area which may affect the species.

*Question 5:* What is critical habitat? *Response:* Critical habitat, if officially designated for an endangered or threatened species, delineates that portion of the species' geographical range which contains physical or biological features essential for its conservation and which is judged to need special management considerations. Section 7 of the Act applies to all listed species regardless of whether critical habitat is designated or not. Critical habitat simply serves to highlight to Federal agencies the need for special care to avoid jeopardizing a threatened or endangered species. Critical habitat, like the listing of a species, does not affect State, local, or private actions unless there is a Federal involvement. Critical habitat is not designated if the Service determines that it would not be prudent to do so; such a determination has been made for the blackside dace. As stated in the proposed rule, the species is restricted to short reaches of small streams, and is very vulnerable to vandalism. Detailed maps as required by the Act for the designation of critical habitat would draw attention to these sites and further threaten the species.

*Question 6:* What happens later if it becomes prudent and critical habitat is designated? *Response:* As noted above, the Service has decided it is not prudent to designate critical habitat. Although in rare cases the Service has designated critical habitat after a species has been listed, we believe it would be a serious threat to the dace to ever designate its critical habitat. No such designation is expected in the future for this species.

*Question 7:* What is the intent of the Endangered Species Act? *Response:* For native fish and wildlife the intent of the Act is to prevent the extinction of species, to provide for the recovery of threatened and endangered species to the point where they no longer require the Act's protection, and to conserve the ecosystems upon which these species depend.

*Question 8:* Would designation of the dace as a threatened species result in its introduction into other streams and extend the protected areas? *Response:* If the dace is listed, as part of the recovery effort for this species the Service would likely give strong consideration to reintroducing it into historic habitat. This would be done in the context of preparing a recovery plan for the species, a process which includes agency review. The Act provides that such reintroductions can be designated as experimental populations. If so designated, these new populations are not necessarily provided with the Act's full protection, in order to foster acceptance of the reintroductions by other agencies and the public.

*Question 9:* Do regulations and control increase as the species declines? *Response:* Provisions of the Act regarding permits to take threatened species are less stringent than permitting requirements for endangered species. However, section 7 of the Act, which requires that Federal agencies ensure that their actions are not likely to jeopardize a federally listed species, treats threatened and endangered species the same.

*Question 10:* Does ultimate protection mean hands off? *Response:* If the species were to decline significantly due to the loss of existing populations, the concern for its survival would increase proportionately, but this still would not mean that all Federal activities in the watershed would jeopardize the species and should be restricted. For example, the smoky madtom (a small catfish) presently exists only in the Cherokee National Forest, Tennessee, in 6.5 miles of one stream. Various activities, including logging, still occur in this watershed without harm to the fish.

*Question 11:* How far can regulation go? If agriculture becomes a major threat, can farmers be told they can no longer plow their fields? *Response:* The Act does not provide the authority to regulate how private landowners farm (or otherwise manage) their lands. Other federally protected aquatic species are found in association with farm lands and farming practices have not been altered. The Service might, however, undertake an educational effort to

encourage farming practices beneficial to the blackside dace.

**Question 12:** Could coal mining, oil and gas drilling, and road construction be curtailed or stopped in affected areas? **Response:** It is unlikely that any of these activities could be or would be curtailed or stopped because of this listing. When the Service consults with Federal agencies regarding activities that may affect a listed species, we review all options, alternatives, modifications, and conservation measures which would allow the project to go forward to meet its objectives without jeopardizing the species' continued existence. The Service conducts thousands of consultations each year, and in nearly all cases the project objectives are met and the species are simultaneously protected. In most cases, we have found that impacts to endangered and threatened species can be eliminated or minimized with relatively minor modifications to proposed projects. The consultation process begins early in the project planning stages, while options are still available and generally before modifications become expensive. We emphasize that the purpose of the Act is not to absolutely prohibit any particular kind of activity, nor to set aside any areas as inviolate sanctuaries, but rather to ensure the continued survival and eventual recovery of the species in coexistence with human activities. Section 7 of the Act prohibits only those Federal activities which are likely to "jeopardize the continued existence of the species."

The U.S. Forest Service (USFS), Daniel Boone National Forest, provided information on the fish's distribution on USFS lands. It also expressed concern that listing would (1) have a significant effect on USFS ownership consolidation efforts and that it would need to emphasize acquisition in watersheds supporting blackside dace, (2) increase USFS requirements for program coordination, and (3) constrain USFS management efficiency because of the lack of knowledge on the species' habitat requirements. The Service concurs that listing will have some impact on USFS operations and management practices. However, as the species on USFS lands is known from only 10 small watersheds representing only a small fraction of the lands within the Daniel Boone National Forest, the Service does not believe that the listing will have a significant impact on USFS operations. The Service has also been in close contact with the USFS concerning future potential conflicts involving the species, and through our section 7

consultation and coordination efforts, we will work toward minimizing any negative impacts on USFS operations as we work toward the species' recovery. Concerning the lack of specific knowledge of the species' life history requirements, listing will increase the opportunities of obtaining funding to conduct blackside dace research.

The USFS Regional office further clarified the USFS position, commenting that it supported the listing and felt that, because of the potential threats to the species, listing would increase the prospects of recovery. The office also stated that it looked forward to working with the Service to develop management guidelines and strategies for recovery of the species.

The Tennessee Valley Authority (TVA) stated that it would support the species' listing if the Service was confident that (1) the species is not present in many other streams, (2) current populations are not outliers of more substantial populations, and (3) the species does not continue to inhabit streams receiving pollution and sediment from active or abandoned coal mines. The Service is confident that TVA's condition numbers 1 and 2 are true. Concerning TVA's position number 3, the Service agrees that the blackside dace does still survive in some streams that receive limited pollution and sediment from active or abandoned coal mines. However, data show that many streams that have received high levels of coal-related pollutants and sediment no longer support the species, and most of the streams that are impacted by coal mining and that still contain the species support only marginal populations. Therefore, the Service does not agree with TVA's conclusion that listing is unjustified if the species can withstand any degree of pollution and siltation from coal mining.

The U.S. Office of Surface Mining did not take a position for or against listing, but did state, in reference to interagency coordination measures already in place, that "We are confident that the habitat of the blackside dace will be preserved, to the extent related to mining, through this existing mechanism." The Service concurs that, through the present section 7 consultation process and by strict enforcement of existing OSM regulations, the species can coexist with coal mining activities.

The National Park Service, which manages lands containing one of the best populations, supported the listing and stated that "we look forward to working closely with you [the Service] to preserve the species." The Service appreciates the Park Service's

commitment and will continue to assist in efforts to secure the species' future.

The Kentucky Department of Surface Mining Reclamation and Enforcement concurred that the species was in danger of extirpation, and further stated that "It is vital that degradation of streams within the upper Cumberland River drainage be avoided to ensure the continued existence of the blackside dace." The Department also referenced the outcome of a meeting among State and Federal natural resource agency representatives and the Service which concluded that: "In most cases coal mining in watersheds with known populations of *Phoxinus* can be accomplished without further endangering the species as long as (1) permits are conditioned to protect the immediate stream environment, (2) strict silt control measures are required, and (3) the permit conditions are adequately enforced."

The Service agrees that these measures should be sufficient in most cases to protect the blackside dace.

Support for listing the blackside dace as a threatened species was received from the Kentucky Nature Preserves Commission, Tennessee Wildlife Resources Agency, Tennessee Department of Conservation, and three private citizens. Two of the private citizens supporting the listing also provided information on potential threats to the species from coal-mined land reclamation and highway construction projects. This information may be pertinent to section 7 consultations involving such projects.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the blackside dace should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the blackside dace (*Phoxinus phoxinus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As the blackside dace was not discovered until 1975 and relatively few historic fish collection records exist for the upper Cumberland River basin, the extent of the species'

historic range and the number of populations that may have been lost are not known. However, based on available data, it can be concluded that the species' total distribution and the size of the extant population has been substantially diminished. Starnes (1981) sampled 168 upper Cumberland River basin streams and reported the fish from only 27 streams. He concluded, based on the physical habitat requirements, that the fish could have been eliminated from at least 52 other waters before the fish's existence was known. O'Bara (1985) surveyed 193 upper Cumberland River basin sites and reported the species present in 30 streams and extirpated from 10. Most of the 30 extant populations are impacted by siltation or some other factor that seriously limits the population's size and vigor. As a result of limiting factors, O'Bara (1985) estimated that the fish now inhabits a total of about 14 stream miles in the 30 streams, and he considered only 9 streams (about 8 stream miles) to contain healthy populations. Only three populations inhabited more than 1 stream mile, and some were limited to just a few hundred yards and were represented by the collection of only one fish (O'Bara 1985).

The upper Cumberland River basin is rich in coal reserves and forested lands, and development of these natural resources with associated road and bridge construction has been extensive and can be expected to continue. The most frequently cited threat (O'Bara 1985) was problems related to coal mining, followed in order of threat by logging, road construction, agriculture, human development, and natural low flows. Only one of the streams described by O'Bara (1985) was not threatened by some factor. Unless the needs of the species are considered so that the impacts from these and other threats can be minimized, the loss of blackside dace populations will continue.

For proper evaluation of these threats, it should be noted that the Service has issued a no-jeopardy biological opinion under section 7 of the Endangered Species Act for the State of Kentucky's and the Federal Office of Surface Mining's coal mine regulation program. Although no final determination could be made until the blackside dace is listed and a consultation undertaken, the Service has no evidence that mining activities conducted in accordance with State and Federal regulations are a threat to the species. Rather, past unregulated activities have contributed to the decline of the blackside dace, and current activities not in compliance with

appropriate regulations are a threat to the species.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** There is no history of this factor being a problem for the blackside dace. However, because interest in the species is expected to be generated by the listing process, the Service is concerned that this problem may arise in the future. To help minimize this threat, the Service has not proposed critical habitat as this action requires delineation of the species' specific habitats (see "Critical Habitat" section of this rule).

**C. Disease or predation.** There is no evidence of threats to this species from disease or predation.

**D. The inadequacy of existing regulatory mechanisms.** Both the State of Tennessee and the State of Kentucky prohibit taking this fish for scientific purposes without a State collecting permit. Federal listing would provide additional protection by requiring Federal permits for taking the fish and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species. However, there are no regulations covering agricultural activities which adversely impact stream habitat.

**E. Other natural or manmade factors affecting its continued existence.** The southern redbelly dace (*Phoxinus erythrogaster*) is not native to the upper Cumberland River basin but is now present in many basin streams. Starnes and Starnes (1981) suggested that this fish "may have displaced the blackside dace to some degree in some of those streams that are less upland in character." They found that the redbelly dace had become established in areas where the water and habitat quality had been altered to create warmer and more turbid conditions. However, they stated that the blackside dace seemed able to persist in the better quality habitats.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the blackside dace (*Phoxinus cumberlandensis*) as a threatened species. Although specific historic records are lacking, available data from habitat evaluations indicate that this fish once likely inhabited many small cool-water streams throughout much of the upper Cumberland River basin. However, the species is now known to exist in only about 14 stream miles in 30 separate streams. The many

factors that brought the species to this condition are still threatening it. Because of the number of populations in existence, it is unlikely the species will become extinct in the foreseeable future. Therefore, endangered species status is not appropriate. The reasons for not proposing critical habitat are discussed in the "Critical Habitat" section of this rule.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Although take of the blackside dace is presently not known to be a problem, the species could be vulnerable to this threat. The fish inhabits very small (7 to 15 feet wide) streams, occupies only short stream segments (most less than 1 mile), exists in small numbers in these stream reaches, and is known from only nine healthy populations. Most of the inhabited stream reaches are also easily accessible by road. Because of potential and perceived conflicts with coal mining activities, substantial notoriety may develop from this final rule and subsequent Federal actions. Therefore, in light of these factors, the Service believes that publishing maps and text detailing the location of the blackside dace's specific habitat and constituent elements of that habitat, as required for any critical habitat designation, would increase the species' vulnerability to illegal taking and/or vandalism, further threaten the species, and increase the law enforcement problem. All appropriate local, State, and Federal agencies and governmental officials will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard (see below). Therefore, it would not be prudent to designate critical habitat for the blackside dace at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and

individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and were recently revised at 51 FR 19926 (June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could impact the blackside dace and its habitat include, but are not limited to, the following: issuance of permits for surface mining, abandoned mine land reclamation, road and bridge construction, and timber management on Federal lands. It has been the goal and the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to

possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### References Cited

- Harker, D.F., M.E. Medley, W.C. Houtcooper, and A. Phillippi. 1980a. Kentucky Natural Areas Plan. Appendix A. Kentucky Nature Preserves Commission, Frankfort, Kentucky.
- Harker, D.F., M.L. Warren, Jr., K.E. Camburn, S.M. Call, G.J. Fallo, and P. Wigley. 1980b. Aquatic biota and water quality survey of the upper Cumberland River basin. Technical Report, Volume I, 409 pp. Prepared for Kentucky Division of Water Quality, Department of Natural Resources and Environmental Protection.
- O'Bara, C.J. 1985. Status survey of the blackside dace (*Phoxinus cumberlandensis*). Report to the U.S. Department of the Interior, Fish and

Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina. 30 pp. plus Appendix.

Starnes, W.C. 1981. Listing package for the blackside dace (*Phoxinus cumberlandensis*). Report to the U.S. Department of the Interior, Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina. 41 pp. plus Appendices A and B.

Starnes, W.C., and D.A. Etnier. 1980. Fishes. Pp. 23-24. In: Eager, D.C., and R.M. Hatcher (eds.), Tennessee's Rare Wildlife, Vol. 1: The Vertebrates. Tennessee Wildlife Resources Agency and Tennessee Conservation Department. 337 pp.

Starnes, W.C., and L.B. Starnes. 1978. A new cyprinid of the genus *Phoxinus* endemic to the upper Cumberland River drainage. *Copeia* 1978:508-516.

#### Author

The primary author of this final rule is Richard G. Biggins, Asheville Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

#### § 17.11 Endangered and threatened wildlife.

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes	.	.	.	.	.	.	.
Dace, blackside	<i>Phoxinus cumberlandensis</i>	U.S.A. (TN, KY)	NA	T	273	NA	NA

Dated: May 27, 1987.

Susan Recce.

Acting Assistant Secretary for Fish and  
Wildlife and Parks.

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